1946. **File No.** O. Succession /16.

Legal Deptt

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Subject:— Opinions under the Indian Succession Act, 1925

(P 78 E)

File No. O. Succession/16.

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C O N T E N T S

egal Department file No. C. Succession /46

Sr. No.	R. I. / C. No.	Subject	Pages.
		Opinions under the Indian Succession Act, 1925.	
1.	8323 22-11-46	Question regarding payment of half provident fund amount of the deceased subscriber due to his nominee, to the Manager of the estate appointed under the Indian Lunacy Act as the nominee has been declared a lunatic. Question whether the payment of half the remaining share should be made to the ~~circular~~ curator or the money retained with Govt. until a succession certificate is issued by the court Secs. 4(1)(c)(ii) and ~~192~~ 192 of the succession Act.	
2.	8327 22-11-46	Question regarding payment of hereditary pension to the decendants of a person who was granted a jaghir as a reward by British Govt. and which was commuted into Hereditary pension.	3-8
3.	9197 18-12-46	Question regarding granting of succession certificate in order to enable the heirs of the deceased to claim their share in the property left behind by the deceased Secs. 381 & 382 of the Act.	9-10

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5 Cs.

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Office of the R.L.A.

In pursuance of the Order dated 29th October 1945 passed by the District Judge, Ahmedabad, Mr. D.C. Dhru has been appointed Curator to take possession of the moveable property of the deceased Alibai and Piroja. The remaining half of the amount of the Provident Fund of deceased Alibai, Viz., Rs. 3,410/- which lies with the Accountant General, Bombay, undisbursed, as the moveable property of the deceased Alibai. As the Curator has been appointed by the Court to receive the moveable property of the deceased Alibai, there is no objection to paying the said amount to the Curator, and such payment will afford a good discharge to Government from any future liability under sub-section (2) of section 197 of the Indian Succession Act, 1925.

Sd/- F.N.Moos

Q.C. 20/11/46

Remembrancer of Legal Affairs.

U.R. to F. & S.D. , No. 6323, dated the 22nd November 1946

Mjr 11/7

4 Cs.

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The history of the grant is brief is as follows:-

In the year 1805, as a reward for important political services rendered to the British Government, Sir Miguel de Lima e Souza, the great grad father of Mr. Michael de Lima e Souza was granted a Jagir constituting of villages in the Kaira Purganah of the value of R. 7000/- per annum. In 180 how ever, at the request of the grantee, the jagir was commuted into a hereditary annuity of Rs. 7000/- a year, the commutation beaing confirmed by the Court of Directors of the 4th November 1814. Sir Miguel died in 1808, and since his death the annuity was being paid to his descendants. As, however, on account of want of a formal deed of grant several conflicting claims arose among the descendants, the annuity was given a legal status of real property and secured by a formal deed of grant dated the 28th May 1877, to the original grantee's direct heir Michael de Lima e Souza, his heirs and assigns. The material recital contained in the deed of grant is this -- " ..... and in pursuance of the said original intention and present desire the said Secretary of State in Council deth hereby grant unto the said Micheal de Lima e Souza his heirs and assigns one annuity or yearly sum of Rs. 7000/- to hold, receive, take and enjoy the said annuity or yearly sum of Rs. 7000/- and every part thereof henceforth for ever to be paid and payable by or on behalf of the said Secretary of State in Council at Her Majesty's Treasury in Bombay unto the said Michael Lima e Souza his heirs and essigns by twelve monthly instalments of Rs. 583-5-4 each on the 1st day of each and every month without any deduction or abtement whatsoever. And the said Secretary of State in Council deth dereby for himself and his successors convenant wi the said Michael de Lima e Souza, his heirs and assigns that the said Secretary of State in Council or his successors shall and will henceforth and for every pay

or cause to be paid into the said Michael de Lima e Souza, his heirs and assigns at Her Majesty's Treasury in Bombay the full annuity or yearly sum of Rs. 7000/- by equal monthly instalments of Rs. 583-5-4 on the 1st day of each and every month without any deduction or abatement whatsoever etc."

2. Micheal de Lima e Souza continued to draw the said annuity of Rs. 7000/- per annum until he died at Naples on the 12th December 1920. He, however, left a will dated 3-6-1917 whereby he disposed of the said annuity between his children under the terms of the will Mrs. Matilda Dyson his niece was appointed as executrix of the will in Bombay. The probate of the said will was granted to Mrs. Matildas Dyson by the High Court of Judicature at Bombay on the 22nd February 1921.

3. From the terms of the will, it would appear that the late Michael de Lima e Souza bequeathed the annuity as follows:-

(1) Thomas Edward (son)	- Rs. 300/- per month for his
(2) Michael. Step brother of Thomas Edeard (son)	- Rs. 150/- per month for his life time only - on his death the amount should go to his wife, Maria Amati, and after her death the amount should revert to his son, Thomas Edward, and his heirs male entail.
(3) Stella (daughter)	Rs. 80/- per month for her life time only and after her death the amount to revert to his son Thomas Edward and his heirs male entail.
(4) Mrs. Matilda Dyson (niece)	Rs. 35/- per month for life time only and after her death the amount to revert to his son, Thomas Edward and his heirs male entail.

A sum of Rs. 350/- per month was bequeathed to Mrs. Matilda Dyson by way of consideration for all the troubles she may have to undergo as executrix of the Will in Bombay. In P.D. letter No. 503, dated 17-1-1922, Govt. instructed the Accountant General, Bombay, that the hereditary annuity of Rs. 7000/- per annum enjoyed by the late Michael de Lima e Souza should be

Italy at Bombay was also informed about the said orders issued for payment of the annuity to Mrs. Matilda Dyson.

4. Accordingly, Mrs. Matilda Dyson used to draw through the Imperial Bank of India the monthly pension in arrears at Rs. 583-5-4 per month upto the end of May 1940, and to remit the amount to the respective heirs through the I Imperial Bank of India. Mrs. Dyson, however, died on the 3rd July 1940 and as since her death no claim was made by the heirs, nor any orders passed by Govt. regarding continuance of the said annuity, no pension at Rs. 583-5-4 per month was paid with effect from 1-8-1940.

5. It appears that in 1944 both the brothers, Messrs. Michel de Lima e Souza and Thomas de Lima e Souza applied to His Majesty's British Cousulate General, Naples, for relief from official sources. They informed the Consulate General that they were the benefeciaries under an indenture that one Mrs. Matilda Dyson, the executrix of the will, used to remit the funds to the two brothers, and that as since May 1940 no remittances were received through Mrs. Dyson, the whereabouts of Mrs. Dyson might be traced and asked in what way she proposed to contribute towards the maintenance of her cousins in Italy. In the subsequent correspondence from the British Counsulate General at Naples dated 29-3-1945, the Counsel General wrote:-

"The brother are also anxious to knwo, in view of the fact that Mrs. Dyson is reported in the letter under reference from the Govt. of India, to have died in July 1941, whether a new executor to their father's will have been appointed, and if not, they are anxious that an executor should be appointed forthwith and that they may once again draw upon this money."

6. Mrs. Dyson dies on 3-7-1940 leaving a will under which one Mr. S.B. Lodrick was appointed as the sole executor Owing to the small value of the estate, Mr. Lodrick has not obtained probate of the will of Mrs. Dyson.

7. Owing to the death of Mrs. Matilda Dyson, the annuity accoumulations due to the heirs of Michael de Lima e Souza

amounting to Rs. 39,566-10-3 have remained undisbursed since 1-6-1946. From the letter of the British Consulate General at Naples, dated the 15th July 1946 it appears that "Michael son of Thomas Edward is now joint claimant with his uncle of the same name (Step brother of Thomas Edward)".

8. In view of the above facts, the Chief Secretary in his note dated 26-8-1946 observes:-

"I think Government must be safeguarded against possible claims that the money is not legally distributed, This was why I wanted a certificate by some authority. L...'. should be asked to say whether Govt. would be safe to proceed without some definite certificate of this kind. We may pay money for the benefit of selected individuals only".

9. It is significant to note that Govt. allowed Mr. Michael de Lima e Souza to dispose of the annuity by a will dated 30-6-1917 and not only acknowledged Mrs. Matilda Dyson as the executrix of the said will, but even directed the Accountant General, Bombay, to pay the annuity to her as executrix of the said will in India. Therefore the only question that remains for consideration is who should administer the estate of the late Michel de Lima e Souza on the death of Mrs. Matilda Dyson the sole executrix of his will.

10. Section 258 of the Indian Succession Act, 1925, enacts that if an executor to whom probate has been granted has died leaving ~~xxxx~~ a part of testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate. "There a sole or last surviving executor dies without having fully administered the estate of the deceased, his executor in case he leaves a will or his administrator in case he died intestate, does not represent the original testator. It is accordingly necessary to appoint an administrator to administer the estate of the original testator left unadministered. Such an administrator is technically called "Administrator de bonis non" (p. 353 of Parucks Succession Act.) Before any action can be taken under this section , two

conditions should be satisfied - firstly, that the executor to whom probate has been granted must be dead, and secondly, that he must have left a part of the testator's estate unadministered. The sole purpose of a grant of administration is the administration of the estate of the deceased which consists of collection of assets, payment of necessary expenses and debts. and the disposition of the assets, in case of testementary succession, by the payment of legacies and carrying out other directions of the will with regard to assets and in case of intestecy, the distribution of assets amongst the legal heirs. When any one or more of these things remaing to be done in respect of the whole or any part of the assets, the estate is said to be not fully administered" (vide p 802 of Sen Gupta's Succession Act) Since in the present case both the conditions are satisfied the only course appears to be to advise the to Michaels, or either of them, to move the High Court for the appointment of an administrator de bonis non. (De Souza v Secy. of State, 12 B.L.R. 423 cited at p811 of Sen Gupta's Succession Act.).

Sd/- P.N.Moos
o.c. 23/11/46

Remembrancer of Legal Affairs.

U.R. t,o P. & S.D. No 6327 dated the 22nd November 1946.

Mjr/11/7

4 Cs.

Office of the A.L.A.

Under section 381 of the Indian Succession Act, 1925, the effect of a succession certificate is to afford protection to the parties as regards all payments made or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted. Section 382 provides that where a certificate in the form, as nearly as circumstances admit, of Schedule VIII has been granted to a resident within a Foreign State by the British representative accredited to the state, or where a certificate so granted has been exetended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court.fees Act, 1870, with respect to certificates under this Part have the same effect in British India as a certificate granted or extended under this Part..It appears that the hesident for Kolhapur and Deccan States has granted Mr. Dinkar Laxman Thakur of Shivapur a succession certificate in respect of each certificates of the value of Rs. 1950/-the balance of Rs. 4942 with Post Offie Savings Bank Account of his deceased wife Krishnabai. Consequently that certificate when stamped in accordance with the provisions of the Court-fees Act, 1870, would be valid entitling Mr. Dinkar Laxman Thakur to claim the cash certificates and the balance in the Postal Savings Bank Account due to his wife. There would, therefore, be no objection to handing over the cash certificates to Mr. Dinkar Laxman Thakur on the strength of the succession certificate issued by the Resident for Kolahpur and Deccan States, Mr. Thakur may approach the Postal authorities if he wants to claim the balance in the Postal savings Bank Account of his deceased wife.

The Succession certificate issued by the Resident for

Kolhapur and Deccan States does not cover 17 totals of gold and sundry articles left by the deceased. Consquently they may behanded over to the person who would produce Letters of Administration nder section 218 of the Indian Succession Act.

Sd/- D.V.Vyas

O.C.

Remembrancer of Legal Affairs.

U.O.R. to G.D. No. 9197 , dated the 18th December 1956.

Mjr/11/7

4 Cs.